IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5668 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KOTHARIYA GRAM PANCHAYAT - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR YOGESH S LAKHANI for Petitioner(s) : 1,
MR NEERAJ SONI, AGP for Respondent(s) : 1,
NANAVATI ASSOCIATES for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 11/12/2006

ORAL JUDGMENT

1. The short facts of the case are that the petitioner is a Gram Panchayat and was

collecting octroi from Respondent No.2 since 1992-93. Respondent No.2 claimed octroi exemption on the ground that it is 100% export oriented unit and, therefore, entitled to the exemption under Rule 36(1)(r) of the Gujarat Gram and Nagar Panchayats Tax and Fees Rules, 1964. It appears that upon the application of the petitioner, initially the matter was considered by the District Development Officer and the Gram Panchayat was informed to take necessary action in this regard. It was also opined by DDO vide letter dated 20.2-1997 that Respondent No.2 is 100% export oriented unit and entitled for the exemption from payment of octroi. The documents were submitted by Respondent No.2, but the petitioner Panchayat denied the same, observing that the item of C.R. Sheet is not engineering goods and other items No.2 to 10 were treated as engineering goods and, therefore, the octroi on that item was collected. It appears that the respondent No.2 addressed a letter to the State Government on 8.5.1997 praying for intervention and passing

necessary orders for exemption and refund of the amount of octroi already paid. The said letter was treated for exercise of the revisional power by the State Government and ultimately after hearing the petitioner Panchayat on 30.6.1997 the State Government passed the order, whereby the decision of the Gram Panchayat vide resolution dated 12.9.1996 was cancelled and it was further ordered that the refund of Rs.7,94,508/- be made to Respondent No.2 Company by the Gram Panchayat. Under these circumstances, the petitioner approached this Court by preferring the present petition.

2. I have heard Mr.Mehta, learned Counsel for Mr.Lakhani, learned Counsel appearing for the petitioner and Mr.Soni, learned AGP for the respondent No.1.

3. Mr.Mehta, learned Counsel appearing for the petitioner raised the contention that for eligibility of exemption, as per rule, the necessary certificate is required to be issued and he submitted that the said certificate must be with the approval of the Secretary of the

Ministry of Commerce of Government of India and since there is no such certificate produced, the exemption cannot be claimed. The said contention deserves to be rejected on the face of it in as much as the certificate is already produced by Respondent No.2 together with the affidavit-in-reply – Annexure – III colly dated 29.6.1992 and vide Clause No.27 of the conditions attached to the letter of Intent, it has been also expressly provided that the application of the industrial undertaking is approved by the specially constituted Board of approval for 100% export oriented undertaking formed under resolution No.8/15 (78/EP) dated 31.12.1980 issued by the Ministry of Commerce. In any case, the certificate is issued by the Government of India for 100% export oriented unit and when the certificate is not under challenge, such a contention even otherwise also cannot be accepted.

4. Mr.Mehta, learned Counsel appearing for the petitioner also contended that the State Government ought not to have exercised the

revisional power upon the letter of the respondent No.2 company when there were remedies provided under the law namely; appeal before the Appellate Committee as per Section 200(8) of the Gujarat Panchayat Act and other remedy. He further submitted that the order of the State Government deserves to be quashed on that ground. In my view the said contention is also ill-founded in as much as the existence of alternative remedy is no bar to the jurisdiction of the State Government under Section 259 when the power is to be exercised in revisional jurisdiction. It is by way of a discretion, the State Government may in normal circumstances not entertain the matter is a different aspect, but once the jurisdiction is invoked and is exercised, such a ground cannot be said as valid for assailing the order, if otherwise the order can stand on merits in the eye of law. Therefore, such contentions cannot be accepted.

5. Mr.Mehta, learned Counsel appearing for the petitioner, lastly submitted that the item, which was not considered for the purpose of

exemption of octroi was C.R. Sheet and other items are considered as engineering goods and, therefore, he submitted that the decision of the Government for treating as 100% octroi exemption on all items is not correct.

6. As such no authenticated record was produced on by the Panchayat before the State Government and, therefore, in absence of any material, the order of the State Government cannot be faulted with. Even the petitioner in the present proceedings has not produced any certificate to show that the item of C.R. Sheet cannot be considered as engineering goods for the production of respondent No.2 company.

7. Apart from the above, as per Rule 36(1)(r), the exemption from payment of octroi is to the raw-material imported by 100% export oriented unit. Therefore, if C.R. Sheet is an item of raw-material for manufacturing of the cylinder as per the certificate issued by the Chartered Engineer, Shri Mahendra Doshi, who has been referred to by the State Government in the order, the conditions of exemption from payment

of octroi would be attracted. Therefore, it cannot be said that any error of jurisdiction is committed by the State Government while exercising the revisional jurisdiction.

8. In view of the above, the order passed by the State Government in revisional jurisdiction does not deserve to be quashed and set aside as no illegality or error of jurisdiction is demonstrated.

9. Under the circumstances, the petition fails. Rule discharged. Interim relief, if any, stands vacated. No costs.

13.12.2006 **(Jayant Patel, J.)**

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